

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	:	
	:	
v.	:	I.D. #0510011598
	:	
JOSEPH D. JAMISON,	:	
	:	
Defendant.	:	

ORDER

This 28th day of February 2006, upon application by the defendant for dismissal of the case for failure to prosecute, it appears:

1. The defendant was arrested on October 16, 2005 and charged with Possession with intent to Deliver, Possession within 300 feet of a church, loitering, and possession of drug paraphernalia.
2. On October 31, 2005, the DAG sent defense counsel a letter which states, *inter alia*, that “[t]he State is in possession of a videotape which records all or part of the alleged crime.
3. On November 1, 2005, counsel for the defendant sent the State a Rule 16 discovery request. In that letter the State was requested to provide “[c]opies of all audio or videotapes which may relate to the alleged incident in this case.”
4. On November 10, 2005, the DAG sent defense counsel another letter noting that the “automatic” discovery response was sent on October 31, 2005 and that the Medical Examiner’s Report would be forwarded “upon receipt of same.”
5. On December 19, 2006, the Court entered a scheduling order setting the case for trial on February 28, 2006. The order instructed the parties to notify the Court within two weeks of any scheduling problems.¹
6. The Medical Examiner’s report is dated January, 2006.
7. The “videotape” referred to in paragraph 2 above and the report from the Medical Examiner were not provided to the defense attorney until **today**, the date of trial. The defense attorney had no opportunity to review the DVD, but based on the representation of the DAG as

¹ Counsel must immediately take all steps to notify witnesses and defendant of the trial date. There will be no further special notification from the Court unless the Court (Attn: Elizabeth Brenhoch) is advised in writing within two weeks of the date of this order of the unavailability of witnesses or any other valid problems, the above trial date will remain firm.

to its contents, believes that it might contain exculpatory evidence on the issue of intent to deliver.

8. Last week the prosecutor told the Court of a personal matter scheduled for this afternoon which would result in a delay in the trial. The Court permitted the delay. This morning the Court instructed the parties to be ready tomorrow morning for jury selection. This afternoon, the State informed the Court of the unavailability of the Chief Investigating Officer tomorrow due to a family medical matter making him unavailable tomorrow and raising a serious question about his availability on Thursday.

9. In response to the State's request for a continuance, the defense sought dismissal of the charges due to the discovery violations and on constitutional grounds.

10. The court notes that the defendant has been in custody on these charges since October 16, 2005, the day of the alleged offense, and has rejected the opportunity to plea to lesser charges.

11. In determining the proper sanction for a discovery violation, the trial court is required to weigh all relevant factors.² The rule provides four alternative sanctions. One sanction is the exclusion of material not disclosed, and another is such other order as the Court "deems just under the circumstances."³

11. The State's tardy discovery responses justify an exclusion of the Medical Examiner's report. The State cannot prove its case without the testimony regarding the substance which forms the basis for three of the charges. The State previously informed the Court that it would *nolle prosequere* the loitering charge. Since the exclusion of the Medical Examiner's report will prevent the State from presenting a *prima facie* case as to the other charges, this indictment is dismissed.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Martin B. O'Connor, Esquire, Deputy Attorney General
Caterina Gatto, Esquire, Deputy Attorney General
Cathy A. Jenkins, Esquire

² *Doran v. State*, 606 A.2d 743, 745 (Del. Supr.1992)

³ Superior Court Criminal Rule 16 (d)(2).